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and Wells Fargo Bank, N.A.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In Re:

RACHAEL EARL,

Debtor.

Proceedings Under Chapter 13

Case No. 2:10-bk-27333-SSC

Adversary No. 2:10-ap-02243-SSC

RACHAEL EARL, an individual

Plaintiff,

v.

US BANK NATIONAL ASSOCIATION AS
TRUSTEE FOR GSAA 2007-9 BY ITS
ATTORNEY IN FACT WELLS FARGO
BANK N.A., SUCCESSOR BY MERGER
TO WELLS FARGO HOME MORTGAGE
INC.; DOES 1-10,000

Defendants.

**OPPOSITION TO PLAINTIFFS'
MOTION FOR REHEARING**

[Relates to D.E. No. 15]

Defendants U.S. Bank National Association, as Trustee for GSAA 2007 (“US Bank”), and Wells Fargo Bank, N.A. (“Wells Fargo”), hereby file this opposition to *Plaintiff’s Motion for Rehearing* (the “Motion for Rehearing,” D.E. No. 15). More than a month and a half after oral argument on Defendants’ Motion to Dismiss, Plaintiff Rachel Earl (“Plaintiff”) now requests that the Court set a rehearing on the Motion to Dismiss or, alternatively, allow Plaintiff to file a written response to Defendants’ reply and oral argument. Plaintiff provides no explanation for her excessive delay in filing the Motion for Rehearing. The Motion to Dismiss has been pending

1 since January 28, 2011, it has been fully briefed since March 4, 2011, and oral argument was held
2 on March 9, 2011. Defendants therefore respectfully request that the Court deny the Motion for
3 Rehearing and proceed with ruling on the Motion to Dismiss without additional argument or
4 briefing.

5 1. On January 28, 2011, Defendants filed their Motion to Dismiss the Complaint with
6 prejudice. (D.E. No. 5) As set forth in the Motion to Dismiss, this adversary proceeding is part
7 of an onslaught of litigation and bankruptcy filings dating back to at least February 2010 in which
8 Plaintiff has asserted legally and factually unsupported claims.

9 2. On January 31, 2011, Defendants obtained a hearing on the Motion to Dismiss for
10 March 9, 2011 at 10:00 a.m. and served a Notice of Hearing on Plaintiff. (D.E. No. 9, 10.)

11 3. On February 18, 2011, Plaintiff filed her response to the Motion to Dismiss, (D.E.
12 No. 12), and Defendants timely filed their reply on March 4, 2011. (D.E. No. 13).

13 4. On March 8, 2011, the Court issued a minute entry in Plaintiff's administrative
14 proceeding in connection with the motion for stay relief filed by US Bank (the "US Bank Motion
15 for Stay Relief," Bk. D.E. No. 9). In the March 8th Minute Entry, the Court vacating the hearing
16 on the US Bank Motion for Stay Relief previously scheduled for March 9, 2011 at 1:30 p.m. The
17 March 8th Minute Entry was not filed in the adversary proceeding and did not mention the
18 hearing on the Motion to Dismiss.

19 5. On March 9, 2011, counsel for Defendants appeared at the hearing on the Motion
20 to Dismiss and argued in support of their Motion to Dismiss. No appearances were made on
21 behalf of Plaintiff.

22 6. The Court subsequently issued a minute entry dated March 9, 2011 reflecting the
23 appearances and events at the hearing.

24 7. On March 9, 2011, Plaintiff's counsel appeared at the March 9th hearing at 1:30
25 p.m. in the administrative proceeding on a motion for stay relief filed by Lund Cadillac (the
26 "Lund Cadillac Motion for Stay Relief"). (Bk. D.E. No. 74.)

27 8. On April 28, 2011, more than a month and a half after the March 9th hearing on
28 the Motion to Dismiss, Plaintiff filed her Motion for Rehearing, requesting that the Court set

1 another hearing on the Motion to Dismiss or, alternatively, allow Plaintiff to file a written
2 response to Defendants' reply and oral argument.

3 9. While Plaintiff's counsel attempts to explain his reason for failing to appear at the
4 Motion to Dismiss as a clerical error in which his office inadvertently vacated the wrong hearing,
5 no explanation is provided as to why Plaintiff's counsel waited more than a month and a half to
6 file the Motion for Rehearing.

7 10. In fact, Plaintiff's counsel should have immediately become aware of his error
8 following the March 9th hearing and taken action. First, upon information and belief, counsel for
9 US Bank in the administrative proceedings spoke with Plaintiff's counsel on March 9, 2011 and
10 informed Plaintiff's counsel that the hearing on the Motion to Dismiss had not been vacated.

11 11. Additionally, Plaintiff's counsel appeared at the March 9th hearing on the Lund
12 Cadillac Motion for Stay Relief. Because the hearing on the US Bank Motion for Stay Relief was
13 not called on at that time, it should have been apparent to Plaintiff's counsel that the Court
14 vacated the hearing on the US Bank Motion for Stay Relief, not the Motion to Dismiss.

15 12. Finally, on March 14, 2011, the Court issued a minute entry reflecting that the
16 hearing on the Motion to Dismiss went forward and only Defendants made an appearance at that
17 hearing. As such, Plaintiff's counsel should have become aware of his office's error by no later
18 than March 14, 2011.

19 13. Had Plaintiff filed her Motion for Rehearing immediately following the March 9th
20 hearing, Defendants would have been more inclined to permit the relief requested therein. As it
21 stands, Plaintiff unreasonably delayed more than a month and a half to file her Motion for
22 Rehearing, and such a delay should not be countenanced. Thus, the Court should deny the
23 Motion for Rehearing.

24 WHEREFORE, in light of the foregoing, Defendants request that the Court deny the
25 Motion for Rehearing and proceed with ruling on the Motion to Dismiss without additional
26 argument or briefing.
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1 DATED this 11th day of May, 2011.

2 SNELL & WILMER L.L.P.

3
4 By: /s/ AVH (025518)
5 Steven D. Jerome
6 Andrew Hardenbrook
7 Attorneys for Defendants U.S. Bank National
Association, as Trustee for GSAA 2007-9,
and Wells Fargo Bank, N.A.

8 COPY of the foregoing served by
9 electronic notification or U.S. Mail on
May 11, 2011, to:

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14
15 /s/ Jennette Golder
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